

board who concurs therein, filed, and authenticated by the secretary.

(d) *Disposition of and action upon proceedings*—(1) *Record of proceedings.* (i) When the review board has concluded its proceedings in any case, the secretary will prepare a complete record thereof. Such record shall include the application for review; a transcript of the hearing if any; affidavits, papers and documents considered by the review board; all briefs and written arguments filed in the case; the report of the examiner; the findings, conclusions, and directions of the review board; any minority report prepared by dissenting members of the review board; and all other papers and documents necessary to reflect a true and complete history of the proceedings. The record so prepared will be signed by the president of the review board and authenticated by its secretary as being true and complete. In the event of the absence or incapacity of the secretary, the record may be authenticated by a second participating member of the review board.

(ii) All records of proceedings of the review board shall be confidential, except that upon written request from the applicant, his guardian or legal representative, The Adjutant General will furnish a copy of the proceedings of the review board, less any exhibits which it may be found impracticable to reproduce out which will include:

(a) A copy of the order appointing the board.

(b) The findings of the Army retiring board affirmed.

(c) The findings of the Army retiring board reversed.

(d) The findings of the review board.

(e) The conclusions which were made by the review board.

(f) The directions of the Secretary of the Army.

If it should appear that furnishing such information would prove injurious to the physical or mental health of the applicant, such information will be furnished only to the guardian or legal representative of the applicant. The Adjutant General, subject to the foregoing restrictions, will make available for inspection, upon request of the applicant, his guardian or legal representative, a record of the proceedings

of any case reviewed by the review board, but copies of the proceedings of any case heard prior to January 4, 1946, will not be furnished if such copies are not readily available.

(2) *Final action by review board.* When the review board has completed the proceedings and has arrived at its decision, the proceedings, together with the review board's decision, will be transmitted to The Adjutant General for appropriate Department of the Army action. The Adjutant General, in the name of the President of the United States, will indicate on the record of such proceedings and decision the President's approval or disapproval of the action of the review board, and will perform such administrative acts as may be necessary and thereafter will notify the applicant and/or his counsel of the action taken. Written notice, specifying the action taken and the date thereof, will be transmitted by The Adjutant General to the president of the review board to be filed by the secretary as a part of the records of the board pertaining to each case.

(e) *Rehearings*—(1) *Policy on the granting of rehearings.* After the review board has reviewed a case and its findings and decision have been approved, the case will normally not be reconsidered except on the basis of new, pertinent, and material evidence, which if previously considered could reasonably be expected to have caused findings and a decision other than those rendered as the result of the original review. An application for rehearing must be made within a reasonable time after the discovery of the new evidence, mentioned in this subparagraph, and the request for rehearing must be accompanied by such new evidence and by a showing that the applicant was duly diligent in attempting to secure all available evidence for presentation to the review board when his case was previously reviewed and that the reason for the delay in discovering such new evidence was not due to fault or neglect on the part of the applicant.

(2) *Application for rehearing.* Any officer desiring a rehearing of his case will make a written application therefor on WD AGO Form 0413 (Application for Review of Findings of the Army Disability Review Board) which may be

## Department of the Army, DoD

## § 581.2

obtained from The Adjutant General, Washington, DC 20310, Attention: AGPO-S-D.

[13 FR 6805, Nov. 19, 1948, as amended at 19 FR 6706, Oct. 19, 1954]

### § 581.2 Army Discharge Review Board.

(a) *Purpose.* This regulation implements 10 U.S.C. 1553, Pub. L. 95-126, and DOD Directive 1332.28 (app. A).

(b) *Explanation of terms—(1) Legal consultant of the Army Discharge Review Board (ADRB).* An officer of The Judge Advocate General's Corps assigned to the ADRB to provide opinions and guidance on legal matters relating to ADRB functions.

(2) *Medical consultant of the ADRB.* An officer of the Army Medical Corps assigned to the ADRB to provide opinions and guidance on medical matters relating to ADRB functions.

(3) *Video tape hearing.* A hearing conducted by an ADRB hearing examiner at which an applicant is given the opportunity to present his/her appeal to the hearing examiner, with the entire presentation, including cross-examination by the hearing examiner, recorded on video tape. This video tape presentation is later displayed to a full ADRB panel. Video tape hearings will be conducted only with the consent of the applicant and with the concurrence of the President of the ADRB.

(c) *Composition and responsibilities—(1) Authority.* The ADRB is established under Pub. L. 95-126 and 10 U.S.C. 1553 and is responsible for the implementation of the Discharge Review Board (DRB) procedures and standards within DA.

(2) *The ADRB president.* The president is designated by the Secretary of the Army (SA). The President—

(i) Is responsible for the operation of the ADRB.

(ii) Prescribes the operating procedures of the ADRB.

(iii) Designates officers to sit on panels.

(iv) Schedules panels to hear discharge review appeals.

(v) Monitors the DOD directed responsibilities of the SA on service discharge review matters for the DOD.

(3) *ADRB panels and members.* The ADRB will have one or more panels. Each panel, when in deliberation, will

consist of five officers. The senior officer (or as designated by the president ADRB) will act as the presiding officer.

(4) *Secretary Recorder (SR) Branch.* The Chief, SR—

(i) Ensures the efficient overall operation and support of the ADRB panels.

(ii) Authenticates the case report and directives of cases heard.

(5) *Secretary Recorder.* The SR is an officer assigned to the SR Branch whose duties are to—

(i) Schedule, coordinate, and arrange for panel hearings at a designated site.

(ii) Administer oaths to applicants and witnesses under Article 136 UCMJ.

(iii) Ensure that the proceedings of the cases heard and recorded into the case report and directive of cases.

(6) *Administrative Specialist.* An Administrative Specialist is an enlisted member assigned to the SR Branch whose duties are to—

(i) Assist the SR in arranging panel hearings.

(ii) Operate and maintain video and voice recording equipment.

(iii) Aid the SR in the administrative operations of the panels.

(7) *Administrative personnel.* Such administrative personnel as are required for the proper functions of the ADRB and its panels will be furnished by the SA.

(d) *Special standards.* (1) Under the November 27, 1979, order of the United States District Court for the District of Columbia in "Giles v. Secretary of the Army" (Civil Action No. 77-0904), a former Army service member is entitled to an honorable discharge if a less than honorable discharge was issued to the service member who was discharged before 1 January 1975 as a result of an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purpose of entry into a treatment program or to monitor progress through rehabilitation or follow up).

(2) Applicants who believe they fall within the scope of paragraph (d)(1) of this section should place the work CATEGORY "G" in block 7, DD Form 293, (Application for Review of Discharge or Dismissal from the Armed